In the Supreme Court of the United States,

OCTOBER TERM, 1903.

ALBERT J. ADAMS, Plaintiff in Error, against THE PEOPLE OF THE STATE OF NEW YORK, Defendant in Error.	No. 504.

MOTION TO ADVANCE.

The plaintiff in error moves the Court to advance this case and assign it for argument on the earliest day convenient to the Court during the present term for the following reasons:

1. That on the 16th day of January, 1902, at the Court of General Sessions of the Peace in and for the County of New York, a bill of indictment was found by the Grand Jury of the County of New York, charging in several counts the defendant, Albert J. Adams, with the crime of knowingly having in his possession a writing, paper and document, representing and being a record of a chance, share and interest in numbers sold in what is commonly called policy, and of knowingly having in his possession, a paper, writing, print, numbers, device, policy slip and articles of a kind such as is commonly used in carrying on, promoting and playing the game commonly called policy in violation of Section 344 A of

the Penal Code of the State of New York. That the defendant was arrested in the State of New York under a warrant issued on said indictment, and on the 14th day of February, 1902, was arraigned to plead thereto, and did on said day plead "Not Guilty" thereto and demanded a trial thereon.

2. That on April 14th, 1903, in due course, a trial was had upon said indictment in the New York Supreme Court, Trial Term, Part I, Criminal Branch, before the Hon. Francis M. Scott, a Justice of said Court, and a Jury, which trial resulted in a verdict of guilty against the defendant, and he was sentenced to be imprisoned in the State prison at hard labor for the term of which the minimum shall be not less than one year, and the maximum of which shall be not more than one year and nine months, and to pay a fine of one thousand dollars, and to stand committed until the same was paid, not exceeding one day for each dollar of the fine imposed from and after the termination of the said term of imprisonment, and that pursuant to such imprisonment and since the 27th day of April, 1903, the defendant has been in actual custody under said sentence, in the State Prison at Sing Sing, in the State of New York, and is now actually confined therein.

3. That upon the trial of the defendant his private papers, seized in a raid of his premises and which had no relation whatsoever to the game of policy, were received in evidence against him, notwithstanding his protest, objection and exception that thereby his constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures would be violated, and that he would also thereby be compelled to be a witness against himself in contraven-

tion of the 4th, 5th and 14th articles of amendment to the Constitution of the United States.

4 That from the judgment of conviction the defendant appealed to the Appellate Division of the Supreme Court, in the First Department of the State of New York, and as grounds of his appeal, and as reasons why the judgment so rendered should be reversed, the defendant urged, among other things, that by the reception in evidence of his private papers aforesaid, his rights secured to him both by the State Constitution and Bill of Rights, and the Federal Constitution, had been violated; and further, that the statutes of the State of New York, designated as Section 344 A and 344 B, under which the indictment was found and the conviction was had, were unconstitutional in that they provided that the possession by any other person other a public officer of any article, paper or document, representing or being a record of any chance, share, or interest in the numbers sold or to be drawn in what is commonly called policy, or in the nature of a bet, wager, or insurance upon the drawing or drawn numbers of any public or private lottery, or any paper, print, writing, numbers or device, policy slip or article of any kind, such as is commonly used in carrying on, promoting or playing the game commonly called policy, should be presumptive evidence of possession thereof knowingly, and deprived the defendant of his liberty and property without due process of law, and denied to him the equal protection of the laws in violation of Section I of the 14th Article of Amendment to the Constitution of the United States, and deprived him of the rights, privileges and immunities secured to other citizens of the State of New York and of the United States.

5. That the defendant's contentions were overruled,

and the judgment of conviction affirmed by the said Appellate Division, in the First Department, and judgment of affirmance entered.

6. That from said judgment of affirmance the defendant appealed to the Court of Appeals of the State of New York, which is the highest court of law or equity in the said State of New York, and before said Court the defendant again urged that his constitutional rights had been violated in the respects above mentioned, but the said Court of Appeals rendered its decision, wherein it decided that by the reception in evidence of the defendant's private papers aforesaid, his constitutional right to be secure in his person, papers and effects against unreasonable searches and seizures was not violated, and that he was not also thereby compelled to be a witness against himself in contravention of the 4th, 5th and 14th Articles of Amendment to the Constitution of the United States, and that the statutes of the State of New York, under which the indictment was found and the conviction was had, were not unconstitutional, in that thereby the defendant was not deprived of his liberty and property without due process of law; nor was he deprived of the equal protection of the laws nor of the rights, privileges or immunities secured to other citizens of the State of New York and of the United States, and directed that the judgment of the Appellate Division be affirmed.

7. That on the 17th day of November, 1903, pursuant to the decision and order of the Court of Appeals, final judgment was rendered against the defendant by the Supreme Court of the State of New York affirming said judgment of conviction.

8. That on the 20th day of November, 1903, a writ of error to this Court, upon application of the defendant,

was allowed by MR. JUSTICE PECKHAM, and pursuant to said writ of error and the citation issued thereon, a return has been made by the Supreme Court of the State of New York to this Court containing a record of the proceedings whereon said final judgment of conviction was rendered, and said return was filed in the office of the Clerk of this Court on the 7th day of December, 1903.

9. That the defendant is upwards of sixty years of age and is in ill health, being now, by the order of the authorities in charge of Sing Sing prison, confined in the hospital ward.

That there still remains a period of about four months before the expiration of the minimum term for which sentence was imposed, and a period of about thirteen months before the expiration of the maximum term of said sentence.

10. That the questions involved in this case, especially the one relating to the reception in evidence of the defendant's private papers, are questions which should be reviewed by this Court, as they involve not only the rights and privileges of this defendant under the Constitution, but also the rights and privileges of other persons accused of crime. That the reception in evidence of the defendant's private papers seems to be in direct conflict with the decision by this Court in the case of BOYD *v.* UNITED STATES, 116 U. S., page 616, wherein it was said that the 4th and 5th amendments to the Constitution of the United States prevented the seizure of a man's private papers for the purpose of discovering evidence of crime against him, and constituted an unlawful seizure within the meaning of those provisions, and that he was thereby also compelled to be a witness against himself in contravention thereof.

That a similar question was presented to this Court in the case of MALLET *v.* STATE OF NORTH CAROLINA, 181 United States, 589, wherein this Court refused to decide the question on the ground that it had not been properly presented and passed upon in the State courts, whereas in the case at bar the question is distinctly raised and was expressly passed upon by all the courts before which the proceedings were brought.

CONCLUSION.

That the actual confinement of the defendant and his precarious condition of health and the importance of the questions involved, are sufficient, we submit, to show the absolute necessity for advancing this case for hearing at the earliest possible time, and unless advanced, the defendant, if he lives, will be compelled to serve out the full term of imprisonment imposed upon him before a hearing can be had by this Court, and the rights of the defendant will be, and the rights of other persons accused of crime in the State of New York may be, seriously impaired and prejudiced by delay in the decision of the questions presented.

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